

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ANTHONY G. COLAROSSİ	:	SMALL CLAIMS DETERMINATION DTA NO. 820036
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and City of Yonkers Resident Income Tax Surcharge under Article 30-A of the Tax Law for the Years 1999, 2000 and 2001.	:	

Petitioner, Anthony G. Colarossi, P.O. Box 201, Yonkers, New York 10710, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and City of Yonkers resident income tax surcharge under Article 30-A of the Tax Law for the years 1999, 2000 and 2001.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 90 South Ridge Street, Rye Brook, New York on April 6, 2005 at 2:30 P.M. Petitioner appeared by Edward S. Broccolo, E.A. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Mac Wyszomirski).

The final brief in this matter was due on September 16, 2005, and it is this date that commences the three-month period for the issuance of this determination.

ISSUE

Whether petitioner has presented sufficient evidence to adequately substantiate itemized deductions as claimed on his amended personal income tax returns for the three years in dispute.

FINDINGS OF FACT

1. Petitioner, Anthony G. Colarossi, timely filed with the Division of Taxation (“Division”) New York State resident personal income tax returns for the years 1999, 2000 and 2001. The returns also reported that petitioner was subject to the City of Yonkers resident income tax surcharge for all three years in question. The following table reflects the income, deductions and tax due as reported on each return:

ITEM	1999	2000	2001
Wages	\$28,849.00	\$29,693.00	\$22,863.00
Public employee contribution	892.00	918.00	717.00
NYS adjusted gross income	29,741.00	30,611.00	23,580.00
Standard deduction	-7,500.00	-7,500.00	-7,500.00
Taxable income	22,241.00	23,111.00	16,080.00
NYS tax due	1,125.00	1,187.00	701.00
Yonkers tax due	113.00	59.00	35.00
Total tax due	1,238.00	1,246.00	736.00
NYS & Yonkers tax withheld	1,387.00	1,498.00	1,126.00
Refund	\$149.00	\$252.00	\$390.00

2. In early 2003, petitioner timely filed amended New York State income tax returns where, in lieu of the applicable standard deduction, he claimed New York itemized deductions of \$13,506.00 for 1999, \$15,647.00 for 2000 and \$16,418.00 for 2001. All three amended returns failed to include in income the public employee contributions as reported on the original returns; did not compute any City of Yonkers resident income tax surcharge; and did not take into consideration the refunds which the Division had previously issued to petitioner as the result of the overpayments shown on the original returns.

3. Subsequent to its receipt of the amended returns, the Division requested that petitioner submit documentary evidence to support the itemized deductions as claimed on the amended returns. Since petitioner failed to provide any documentary evidence to support claimed itemized deductions, the Division, on August 22, 2003, issued a Notice of Disallowance to petitioner denying in full the refund as claimed on the amended return for the 2001 tax year. A second Notice of Disallowance was issued to petitioner on October 3, 2003 wherein the refunds claimed on the 1999 and 2000 amended returns were also denied in full.

4. At the small claims hearing held herein, the parties agreed that, in lieu of submitting documentary evidence for all three years at issue, the 2000 tax year would be used as a test year and that petitioner need only submit evidence to support itemized deductions as claimed on the 2000 amended return. The New York itemized deductions as reported on the amended return for 2000 included the following items and amounts:

ITEM	2000
Taxes	\$1,498.00
Contributions	1,800.00
Miscellaneous deductions	13,847.00
Total Federal deductions	17,145.00
Less: state and local taxes	1,498.00
Total NYS deductions	\$15,647.00

5. Miscellaneous itemized deductions for the 2000 tax year included, *inter alia*, unreimbursed employee business expenses totaling \$13,821.00, which amount consisted of \$10,291.00 for vehicle expenses (31,665 business miles x \$.325 per mile); \$670.00 for parking fees, tolls and transportation; \$2,190.00 for business expenses exclusive of meals; and, \$1,340.00 for meals and entertainment expenses. During the course of this proceeding, the Division

stipulated that it required documentary evidence to support only the claimed unreimbursed employee business expenses of \$13,821.00 and that documentary evidence need not be submitted for all other itemized deductions as claimed on the 2000 amended return.

6. To support the 31,665 business miles as claimed on his 2000 amended tax return, petitioner submitted in evidence a photocopy of a document entitled “Log Book 2000.” The log book consisted of a separate handwritten monthly calendar for each month of the year, except for the month of November which was not included in the log book. The log book contained a single numeric entry for every day of the week, Monday through Friday, for all 11 months contained in the log book. According to petitioner’s representative, petitioner worked union and nonunion construction jobs and each numeric entry made in the log book represented the number of miles that petitioner drove round-trip to a job site on a specific day. The photocopy of the log book was the only document presented to substantiate the \$13,821.00 of claimed unreimbursed employee business expenses.

7. Petitioner also filed amended Federal income tax returns for the years 1999, 2000 and 2001 with the Internal Revenue Service (“IRS”) where he, consistent with his amended New York State income tax returns, likewise claimed itemized deductions in lieu of the standard deduction. The IRS reduced each claim for refund on the basis that the claim had failed to take into consideration the refund which had been issued on the original return, but otherwise it made no adjustment to petitioner’s claimed itemized deductions.

SUMMARY OF PETITIONER’S POSITION

8. Petitioner argues that the IRS conducted a comprehensive examination of each Federal claim for refund for the years 1999, 2000 and 2001 and that the Division should accept the results of the IRS audit without further documentation or review. Alternatively, petitioner

asserts that log book introduced into evidence is sufficient to adequately document the claimed unreimbursed employee business expenses for the 2000 test year and that the refunds should therefore be allowed.

CONCLUSIONS OF LAW

A. Addressing first petitioner's argument that the Division is required to allow the refunds since the IRS granted the refunds for the three years at issue, I find that such argument is without merit. As relevant to this controversy, regulation 20 NYCRR 159.4 specifically states that the Division, with respect to changes made by the IRS, "is not required to accept as correct any change (as set forth in this Part) in a taxpayer's Federal taxable income . . ." but instead "may conduct an independent audit or investigation in regard thereto." Accordingly, the Division was authorized to conduct its own examination into the validity of petitioner's amended returns for the years 1999, 2000 and 2001, and thus it was proper for the Division to request that petitioner submit documentary evidence to substantiate the itemized deductions claimed on the amended returns. Furthermore, while petitioner's representative argued that the IRS conducted a detailed audit of the amended returns, there is no credible evidence in the record before me to support this allegation. In any event, even if the IRS did in fact conduct an audit of the amended returns, the Division, as noted above, is authorized to perform its own audit.

B. Turning next to the issue concerning the adequacy of the evidence presented to support the claimed unreimbursed employee business expenses for the 2000 tax year, it must be concluded that petitioner has failed to meet his burden of proof, pursuant to Tax Law § 689(e), to substantiate the claimed expenses. Initially, it is noted that petitioner failed to appear at the hearing to give his testimony, nor was an affidavit offered in lieu of his testimony. Accordingly, there is no credible evidence to establish the nature of petitioner's employment or the reason

why he would have incurred substantial unreimbursed employee business expenses. Furthermore, the log book, which was the only document submitted in evidence to support claimed unreimbursed employee business expenses, is accorded little or no weight. From my review of the photocopy of the handwritten log book, it appears that this was not a contemporaneously maintained document. Also, there are no entries in the log book as to the specific location that petitioner purportedly traveled to. A handwritten log book containing only a number entry on each Monday to Friday workday, which number is purportedly the unreimbursed business miles driven by petitioner on that day, is clearly insufficient to document the claimed expense. Finally, the accuracy and validity of the claimed unreimbursed employee business expenses are immediately brought into question when one considers that petitioner's reported gross income for the three years in question averaged \$27,135.00, yet his claimed unreimbursed employee business expenses averaged \$15,779.00 per year. With 58% of his gross income attributable to claimed unreimbursed employee business expenses, it is reasonable for the Division to request documentary evidence to substantiate the claimed expenses. Without petitioner's testimony or any other credible documentary evidence, it can only be concluded that petitioner has failed to sustain his burden of proof in this matter.

C. The petition of Anthony G. Colarossi is denied and the Division's two notices of disallowance, dated August 22, 2003 and October 3, 2003, are sustained.

DATED: Troy, New York
November 3, 2005

/s/ James Hoefer
PRESIDING OFFICER